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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/622,227	07/18/2003	Andres M. Lozano	AB-349U	4651

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EXAMINER

ROLLINS, ROSILAND STACIE

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/622,227	Applicant(s) LOZANO, ANDRES M.	
	Examiner Rosiland S. Rollins	Art Unit 3739	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 August 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 4, 6, 7, 13, 14, 16 and 20-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5, 8-12, 15, 17-19 and 23-26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>12/29/03</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Claims 4, 6, 7, 13, 14, 16 and 20-22 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 15, 2005.

Examiner agrees that independent claims 1, 8, 15, 17 and 23 are generic.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 3, 5, 8-12, 15, 17-19 and 23-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jog et al. (US 2003/0083724) in view of Cosman (US 4907589). Jog et al. disclose a system and method for creating a brain lesion comprising a brain stimulation lead (figure 1) at least one electrode (STQ) at a distal end of the brain stimulation lead that is capable of delivering both stimulation pulses and lesioning current to tissue adjacent the at least one electrode; at least one wire (figure 4; paragraph [0030]) electrically connected to the at least one electrode; and at least one contact (connector pad, figure 4) at a proximal end of the lead electrically connected to the at least one electrode via the at least one wire; an RF generator (paragraph [0103]) electrically connected to the at least one contact at the proximal end of the brain

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stimulation lead. Jog et al. teach all of the limitations of the claims except a temperature sensor positioned to sense and report the temperature near the tissue receiving the lesioning current.

Cosman discloses a lesioning device and teach that it is old well known in the art to provide a temperature sensor to sense and report the temperature near the tissue receiving the lesioning current as a means of controlling the amount of power supplied to the device and regulating the temperature of the electrode. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include a temperature sensor on the Jog et al. device as taught by Cosman to provide a means of controlling the power supplied to the device and regulating the temperature of the electrode.

Regarding claim 23, Jog et al. disclose that the neural tissue of the target site is monitored over a period of chronic stimulation to adjust for changes. It would have been obvious to one of ordinary skill in the art at the time the invention was made to select a week as time frame in which to monitor the effects of the device, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rosiland S. Rollins whose telephone number is (571) 272-4772. The examiner can normally be reached on Mon.-Fri. 9:00 AM - 6:00 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Rosiland S Rollins
Primary Examiner
Art Unit 3739